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Mr. Robert Sussman
Senior Policy Counsel
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Mr. ~~Sussman~~ Bob:

I am writing to correct the unfortunate misstatements in the December 2, 2010, letter sent to you by Stuart Gruskin, the Executive Deputy Commissioner of the New York State Department of Environmental Conservation, regarding the Hudson River.

GE is not Advocating a Capping Remedy

First, contrary to Mr. Gruskin's claims, GE is not advocating a capping remedy as a substitute for dredging in Phase 2. As you know, GE Chairman Jeff Immelt has repeatedly stated that GE is committed to cleaning up the Hudson River and undertaking a substantial Phase 2 dredging project – one that will result in the removal of 2.5 million cubic yards of sediment over a multi-year period. In fact, GE estimates that the dredging approach that we have proposed will remove approximately 97% or more of the PCBs in the targeted dredge area. Capping would be used only after extensive dredging has been completed to isolate residual or very low levels of PCBs that cannot practicably be removed through dredging. EPA itself determined that this approach is entirely consistent with the Record of Decision (ROD). As Mr. Gruskin should know, this type of capping is <u>not</u> the "capping alternative" that EPA rejected in the ROD. To suggest otherwise is disingenuous.

Capping of Residuals is Common to Environmental Dredging Projects and Fully Protective of the Environment

Mr. Gruskin ignores the critical fact that all dredging projects produce generated residuals, which act as a practical limitation on the effectiveness of dredging. As the independent Peer Review Panel observed, "It is common knowledge among dredging practitioners and environmental scientists and engineers that dredging activity always leaves behind some residual material." (Peer Review Report p. 50) Capping is designed to isolate those "generated residuals" — disturbed sediments that, during dredging, escape from the bucket, slide in from side slopes and return to the dredged surface.

The peer review panel noted the futility and adverse consequences of trying to remove these residuals: "Multiple passes to remove generated residuals are inefficient, have limited success in achieving the 1 mg/kg Tri+ PCB goal, and leave CUs open unnecessarily." (p. 56) On Page vii of the report's Executive Summary, the peer reviewers make the point even more emphatically: "Do not redredge to capture residuals." The record of Phase 1 shows clear evidence of generated residuals in at least a third of the post-dredging samples.

Mr. Gruskin is also incorrect in his assumption that deeper dredging to remove clean sediment will eliminate the need for capping. The experience from Phase 1 demonstrates unequivocally that dredging cannot remove all PCBs, especially where areas surrounding the dredge prism contain PCB concentrations higher than the target residual standard. In Phase 1, the data demonstrate that capping was required in nine of the ten certification units dredged, even after as many as four and five dredge passes were taken.

As the Peer Review Panel noted, "[r]edreging provided limited and apparently diminishing returns." For this reason, the Panel expressly recommended against taking multiple dredge passes to chase diminishing levels of PCBs. The fact is deeper dredging to chase minute amounts of PCBs will result in the removal of hundreds of thousands of cubic yards of clean sediment that will then have to be processed, transported by rail and disposed of, needlessly, in landfills.

Mr. Gruskin's letter also erroneously suggests that capping is not reliable. In fact, capping is widely accepted as a protective method to isolate PCB contaminated sediments and prevent migration of PCBs, even at significantly higher concentration levels than the low level and residual PCBs that would be capped here. As noted by the Peer Review Panel, "when dredged areas are covered with backfill or an engineered cap . . . residuals become isolated, making them unavailable to biota." (p.49). In addition, the Panel observed, "the backfill or cap eliminates the risk from any residual PCBs in the sediments." (p. 85). Moreover, EPA's own guidance recognizes capping as an effective tool to manage risks, including in rivers with high flow conditions. *Contaminated Sediment Remediation Guidance for Hazardous Waste Sites* (Dec. 2005).

In this case, the caps for the Hudson River were designed utilizing state-of-the-art computer modeling that was based on site-specific data and conservative assumptions regarding the potential movement of PCBs to withstand conditions in the River over time, including during high flow events. EPA approved the design and use of these caps for Phase 1 and has not sought any changes to the cap design. Further, GE has an obligation to monitor and maintain all caps in the future.

GE has designed the capping used in this project to take into consideration habitat protection, again contrary to the assertions in Mr. Gruskin's letter. GE's proposal for Phase 2 capping includes the use of more fine grained material (Type 2 backfill and coarse gravel), in lieu of armor stone in areas with low and medium river velocities. Additional backfill also will be used to create aquatic vegetation habitat in areas where replanting occurs. If needed, the additional backfill could be placed on top of armor stone in high velocity areas. These modifications,

combined with the extensive habitat restoration work that GE will undertake, will provide habitat for aquatic and benthic organisms.

GE Has Committed to Use Significantly Less Capping in Phase 2

Nor is GE proposing to increase the use of capping in Phase 2, contrary to Mr. Gruskin's assertions. To the contrary, notwithstanding the fact that the independent Peer Review Panel that evaluated the performance of Phase 1 called for the use of "*more efficient and extensive use of capping*" in Phase 2, GE has agreed to use significantly *less* capping than was used in Phase 1. (Peer Review Report p. 50) While technical discussions with EPA are ongoing regarding the limits of what can be practicably achieved, we have committed to achieving a greater than 50% reduction in capping in Phase 2 from Phase 1 levels.

Superfund Requires a Cost Effective Remedy

Lastly, Mr. Gruskin accuses GE of being motivated solely by its desire to save money. This accusation is unfounded and irresponsible. As Mr. Gruskin should be aware, Superfund requires EPA to take cost into consideration when selecting a remedy; under the National Contingency Plan, any remedy selected must be cost effective. To do otherwise would be contrary to law and contrary to any sensible balancing of benefits and costs.

The fact is GE has seldom raised cost issues with EPA. When EPA selected dredging as the remedial strategy for the Hudson River in its 2002 Record of Decision, GE made a public commitment to cooperate fully with the Agency to implement the dredging project. GE has met every one of its many commitments to EPA on the Hudson River. We assembled a world-class team of environmental scientists and dredging experts to design the project and successfully performed the work under round-the-clock oversight by EPA.

At the end of the day, we all expect balanced regulation. Mr. Gruskin's letter represents a very different approach—regardless of the law and the facts. We very much want to grow and prosper in New York, but hardly at the cost of a regulatory environment that ignores that balance.

Sincerely,

cc: Gov.-elect Andrew Cuomo
Judith Enck, EPA Region 2
Peter Iwanowicz, Acting NYDEC Commissioner
Stuart F. Gruskin, NYDEC
Walter Mugdan